

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE MICHAEL S. NACHMANOFF,  
UNITED STATES DISTRICT COURT JUDGE

## APPEARANCES:

For the Plaintiff: WHITESTONE LAW PLLC (NA)  
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25 Proceedings reported by machine shorthand. Transcript produced  
by computer-aided transcription.

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*Proceedings*

1                   THE COURTROOM DEPUTY: *Thousand Oaks Barrel Company,*  
2 *LLC v. The Partnerships, et cetera*, Case Number 23-cv-1563.

3 Will the parties please note their appearances for the record?

4                   MR. ZITO: This is Joseph Zito on behalf of Plaintiff  
5 Thousand Oaks, and with me is Mr. Kendal Sheets.

6                   THE COURT: Good morning.

7                   MR. REILLY: Craig Reilly here on behalf of Defendant  
8 No. 59, GWSK.

9                   THE COURT: Good morning.

10                  This matter comes before the Court on Defendant's  
11 motion to dismiss. I was going to take the bench early. I  
12 understood that you-all were discussing matters and there's  
13 something that needs to be addressed preliminarily before we  
14 address the motion.

15                  MR. ZITO: Yes, Your Honor. Counsel, Mr. Reilly, who  
16 I have to note for the record, is actually the individual who  
17 did my first *pro hac* into this court. He's also the individual  
18 who sponsored Mr. Sheets' admission to this court. A fine  
19 attorney. We were able to work out all of the differences, and  
20 we are dismissing, without prejudice, against Defendant No. 59.

21                  THE COURT: Mr. Reilly, I assume you have no objection  
22 to the dismissal since that's what you've requested in your  
23 motion and in your reply brief; is that correct?

24                  MR. REILLY: That is correct, Your Honor.

25                  THE COURT: All right. Well, I will grant the motion

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1 to dismiss without prejudice. I will say that the Court  
2 doesn't need to weigh in on anything else, having granted the  
3 motion, but I would note that the allegations that are made by  
4 the defendant regarding the litigation as a whole are really  
5 quite serious, and Plaintiff's counsel needs to think very  
6 carefully about how it's going to proceed here. I'm not going  
7 to give an advisory opinion. The matter hasn't been fully  
8 briefed, but, Mr. Zito, you're correct that Mr. Reilly is well  
9 respected, and it doesn't surprise me at all that he moved for  
10 your admission at some earlier time. This is not his first  
11 involvement in this case. There was another matter in which  
12 very serious allegations were made about the way this case has  
13 been brought, the way it's structured, and the way it's being  
14 litigated. That case also was transferred and, as I understand  
15 it, has now been dismissed in the Western District of Missouri;  
16 is that correct?

17 MR. ZITO: That's correct, Your Honor.

18 MR. REILLY: Yes, Your Honor.

19 THE COURT: Well, there may come a time when these  
20 issues are addressed by the Court, and if they are addressed in  
21 a way in which there are allegations in which there was bad  
22 faith or a violation of Rule 11, well, the Court will have to  
23 confront that when it's before the Court.

24 The nature of these allegations is that these are very  
25 small companies, this is very complicated litigation, and

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1 while, certainly, the courts are here to facilitate the  
2 voluntary resolution of matters through settlements and  
3 licenses, it is not appropriate to abuse the court's process by  
4 creating and pursuing litigation in which people don't have a  
5 fair opportunity to get to the merits of them.

6 And, again, this matter has been dismissed, so we  
7 don't have to address it, but I will tell you that Rule 4 is  
8 very clear with regard to the requirement of the summons. And  
9 whether or not there was a desire to save money by not hiring a  
10 process server or going through a different process that, quite  
11 frankly, is totally unfamiliar to the Court in which you send  
12 the complaint but don't provide the summons and all of the  
13 necessary requirements of Rule 4, you need to rethink that  
14 strategy.

15 We're coming to a point where all of these issues on  
16 the merits will have to be addressed very soon. I'm not going  
17 to say any more than that. The matter has been dismissed  
18 without prejudice. I will expect the status reports that  
19 you've been filing to continue, but you should know that this  
20 is now a second time in which serious allegations have been  
21 made. They are now being avoided, but that may change.

22 MR. ZITO: Thank you, Your Honor.

23 MR. REILLY: Thank you, Your Honor.

24 THE COURT: I will note that we are ending your matter  
25 before ten o'clock.

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(Whereupon, the proceedings concluded at 9:58 a.m.)

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CERTIFICATE OF REPORTER

5 I, Diane Salters, hereby certify that the foregoing  
6 transcript is a true and accurate record of the stenographic  
7 proceedings in this matter.

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/s/ Diane Salters

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Diane Salters, CSR, RCR, RPR  
Official Court Reporter